



**DEPARTMENT OF PUBLIC SAFETY
POLICIES & PROCEDURES**



POLICY NUMBER

ADM: 04

**EFFECTIVE
DATE:
11/29/2010**

**ORIGINAL
ISSUED ON:
10/26/1988**

REVISION NO:

4

SUBJECT: INTERNAL INVESTIGATIONS

1.0 PURPOSE

The purpose of this policy is to provide employees of the Department of Public Safety with an effective system for the reporting, investigation and conclusion of internal investigations concerning employee misconduct.

2.0 POLICY

It is the policy of the Department of Public Safety to investigate all complaints against department employees in order to preserve public confidence, maintain professional conduct and ensure the overall integrity of the department.

3.0 APPLICABILITY

This policy is statutorily mandated for all DPS commissioned personnel pursuant to the Peace Officers Employer-Employee Relations Act. Serious allegations of employee misconduct involving non-commissioned personnel may also warrant an Internal Affairs Investigation. Supervisors of non-commissioned personnel should follow this procedure where, in their discretion, it is practical to do so.

Internal investigations of those employees who are also members of the Motor Transportation Police Division and who fall under the **Agreement Between The State of New Mexico and New Mexico Motor Transportation Employee's Association** contract will be conducted according to the stipulations contained in that agreement.

4.0 REFERENCES

- A. Peace Officer's Employer - Employee Relations Act, 29-14-1 through 29-14-11 NMSA.**
- B. CALEA Chapter 52 - Internal Affairs.**
- C. IACP National Law Enforcement Policy Center; "Investigations of Employee Misconduct" Concepts and Issues Paper; Published 1990; Revised 2001.**
- D. New Mexico State Personnel Board Rules and Regulations.**

5.0 DEFINITIONS

- A. Administrative Inquiry** – An exploration of facts and evidence, conducted by any department supervisor, into allegations of misconduct. During an inquiry, the employee accused of misconduct may not be interrogated. This does not prohibit the supervisor(s) of the accused employee(s) from requiring a written response or official report.

- B. Corrective Action** – Action taken by a supervisor to correct an employee's behavior. Examples of corrective action are: verbal or written counseling, mandatory retraining, cautionary letters and corrective action plans.
- C. Disciplinary Action** – Punitive action taken against an employee in order to discourage certain behavior and to deter others from becoming involved in the same type of misconduct. Examples of disciplinary action are: letter of reprimand, suspension, and termination.
- D. District/Bureau Internal Affairs Investigations** – An investigation conducted by a bureau chief, division director, district commander or section commander or their designee, with the approval and coordination of the Standards Bureau commander, for allegations of misconduct that would not normally result in substantial sanctions against the subject employee but for which corrective action would be ineffective. District Internal Affairs Investigations shall be conducted pursuant to the Peace Officer's Employer - Employee Relations Act.
- E. Internal Affairs Investigation** – An official department administered investigation into a complaint of misconduct. Internal Affairs Investigations shall be conducted pursuant to the Peace Officer's Employer - Employee Relations Act.
- F. Interrogation** – The formal questioning of an employee during an Internal Affairs Investigation in which the employee is compelled to give truthful and complete answers to investigators. Employees who do not give truthful and complete answers are subject to disciplinary action up to and including termination.
- G. LEP** – An acronym for the Department of Public Safety Law Enforcement Program.
- H. SB** – An acronym for the Standards Bureau, formerly the Office of Professional Standards and Internal Affairs.
- I. Subject Employee** – The departmental employee who is the subject of a complaint.

6.0 PROCEDURE

A. Organizational Structure & Reporting

1. The commander of the Standards Bureau shall report directly to the Chief of the State Police (NMSP).
2. The arrest of any department employee, any felony allegation or deadly force incident involving a department employee shall be immediately reported to the Chief of the State Police.
3. The Standards Bureau commander shall provide the Chief of the State Police with an annual summary of complaints against employees and final dispositions.

B. Complaints

1. All complaints against department employees or the department in general, shall be documented and investigated, including anonymous complaints. Complaints and allegations may be generated from outside or within the department.
2. Complaints may be received by supervisory members of this department in person, over the telephone, by mail, by electronic (e-mail) or in writing and may be lodged anonymously or by any other means. All complaints will be recorded on the

INTERNAL INVESTIGATIONS

standardized complaint form, (attached). Whenever practical, supervisors should meet with the complainant in person and obtain an original signature on the complaint form.

3. No employee shall discourage, interfere, retaliate against or delay a complainant from lodging a complaint. All employees of the department shall make every effort to facilitate the convenient, courteous and prompt receipt of a complaint. This includes calling a supervisor to the scene, explaining the department's procedures and explaining alternate means for lodging complaints.
4. All DPS facilities will have informational material regarding procedures to be followed in registering complaints against the department or its employees. The material will be distributed to the public upon request. This information shall also be made available on DPS websites along with the means to lodge complaints electronically. The means of filing electronic complaints shall be made simple and convenient.

C. Investigative Jurisdiction: The DPS Secretary, the Chief of the State Police or the Standards Bureau commander may assign a supervisor to conduct an Administrative Inquiry or an Internal Affairs Investigation. The following guidelines will be used in determining which will occur.

1. Administrative Inquiries may be conducted by any department supervisor as assigned to investigate violations of less serious department policies or rules, less serious State Personnel Board Rules, laws categorized as petty misdemeanors or less serious traffic offenses. Examples of these violations are:
 - a. Rudeness or poor demeanor.
 - b. Speeding.
 - c. Use of profane language.
 - d. Violation of Dress Code.
2. The results of Administrative Inquiries and any corrective action taken shall be recorded on an intra-departmental correspondence and forwarded, along with the original complaint form, to the Standards Bureau.
3. Once an Administrative Inquiry has been completed, the division director, district commander or section commander may impose corrective action or make a recommendation to the Standards Bureau commander for an Internal Affairs Investigation.
4. With the coordination and approval of the Standards Bureau commander, bureau chiefs, division directors, district commanders and section commanders may conduct District Internal Affairs Investigations for allegations of misconduct that would not normally result in substantial sanctions against the Subject Employee but for which corrective action would be ineffective. Examples of these violations include, but are not limited to:
 - a. Repeated violations of late reports.
 - b. Repeated violations of failure to submit reports.

- c. Repeated tardiness.
 - d. Incidents of insubordination.
 - e. Speeding in department vehicles.
 - f. Accidental discharge of a firearm not resulting in injury or substantial property damage.
5. Internal Affairs Investigations are conducted for allegations of a more serious nature. A brief Administrative Inquiry is usually required to determine the veracity of the complaint. After the Administrative Inquiry has been conducted, complaints of a serious nature shall be forwarded to the Standards Bureau for review and further investigation as necessary. Examples of these types of complaints include, but are not limited to:
- a. Excessive Use of Force.
 - b. Civil Rights Violations.
 - c. Misdemeanors.
 - d. Felonies.
 - e. False Arrest.
6. Internal Affairs Investigations will be conducted in any incident involving death or serious injury resulting from the acts or omissions of any department employee.
7. Complaints containing allegations of serious criminal activity will first be referred to the DPS Investigations Bureau. If during the course of an investigation, possible criminal conduct is uncovered, the investigation will be returned to the Chief of the State Police for disposition.
8. Not all complaints can be automatically categorized. Department supervisors are required to exercise good judgment in determining how to route a complaint. If a supervisor's Administrative Inquiry finds grounds that may support disciplinary action, that supervisor shall notify the Standards Bureau. Administrative Inquiries may be upgraded to Internal Affairs Investigations.

D. Complaint Processing:

- 1. When a complaint is received, the supervisor receiving the complaint will notify the Subject Employee's district commander, section commander or bureau chief. In cases where the Subject Employee is a commander, bureau chief or higher, the supervisor receiving the complaint will notify the next highest common supervisor.
- 2. The DPS Secretary, upon recommendation from either DPS deputy secretary, may relieve a Subject Employee from duty and place him/her on administrative leave or administrative duties pending disposition of an administrative investigation.
- 3. The supervisor assigned to investigate the allegation will provide a copy of the completed complaint form to the complainant along with an informational packet. The informational packet will confirm the complaint was received, give contact

information of the supervisor who will conduct the investigation, and briefly describe the investigative process.

E. Internal Affairs Investigations:

1. Internal Affairs Investigations for commissioned personnel will be conducted in accordance with the Peace Officer's Employer - Employee Relations Act 29-14-1 through 29-14-11 NMSA.
2. Internal Affairs Investigations for non-commissioned employees will be conducted in accordance with New Mexico State Personnel Board Rules.
3. Interrogations of Subject Employees will be conducted at the employer's facility, when the employee is on duty, during the employee's normal waking hours, unless the urgency of the investigation requires otherwise.
4. Employees who become the subject of an Internal Affairs Investigation will receive a copy of the Peace Officer's Employer - Employee Relations Act (*commissioned employees only*), which informs the employee of their rights and responsibilities relative to the investigation and a copy of this policy.
5. Prior to any interrogation, the Subject Employee will be issued a written notice of investigation letter, which shall inform him/her of the nature of the investigation and the names of all known complainants, unless the Chief of the State Police decides the release of the names of the complainants could jeopardize the safety of an informant or compromise the integrity or security of an investigation.
6. A reasonable attempt will be made to contact the Subject Employee's commander or division director, prior to any interrogation.
7. Prior to any interrogation, the Subject Employee shall be given a New Mexico DPS Compelled Employee Statement form which contains the "Garrrity Warning," and is signed by the Subject Employee and the interviewer(s).

Those members of the Motor Transportation Police Division bargaining unit will also be afforded those rights guaranteed under the contract.

8. Prior to any interrogation, the Subject Employee shall be informed of the name and rank of the person in charge of the investigation and all other persons who will be present during the interrogation.
9. Interrogation sessions shall not exceed two hours, unless mutually agreed upon by both parties. There shall not be more than two interrogation sessions in a 24-hour period, unless mutually agreed upon by both parties and provided there shall be at least a one hour rest period between sessions.
10. During an interrogation session, there shall not be more than two interrogators at any given time. Employees will be allowed to attend to physical necessities during the course of an interrogation, and employees shall not be subjected to offensive language or illegal coercion.
11. Interrogations of employees will be recorded. Upon written request from a Subject Employee, an accurate copy of the transcribed interview will be provided within 15 days of the completed investigation.

INTERNAL INVESTIGATIONS

12. Administrative investigation files are confidential and may not be copied for Subject Employee review. Subject Employee will be provided the opportunity to review the administrative investigation file during the appeal process.
 13. When a commissioned employee is under administrative investigation and a determination is made to commence a criminal investigation, that employee shall be immediately notified of the investigation and shall be afforded all the protections set forth in the United States Bill of Rights and the New Mexico Constitution.
 14. During the course of an administrative investigation, the DPS Secretary or his designee, may order a Subject Employee to submit to a polygraph examination once the case has been reviewed, provided that all other reasonable investigative means have been exhausted and the Subject Employee has been advised of the reasons for ordering the examination.
 15. During the course of an administrative investigation, the DPS Secretary or his designee, may order Subject Employee/s to participate in line-ups or submit to photographs, medical examinations or laboratory tests that are reasonably related if they are an imperative component to resolving the investigation; all other reasonable investigative means have been exhausted; and the Subject Employee has been advised of the reasons for ordering the procedures.
 16. During the course of an administrative investigation, employees shall not be required to disclose information regarding financial status, unless all other reasonable investigative means have been exhausted or except as required by law.
 17. District/Bureau Administrative Inquires, along with inquiry reports, will be completed and submitted to the Standards Bureau within 20 calendar days of the assignment. Extensions may be granted for extenuating circumstances, upon written request and approval from the Standards Bureau commander.
 18. Standards Bureau Administrative Inquires, along with inquiry reports, will be completed and submitted within 30 calendar days of the assignment. Extensions may be granted for extenuating circumstances, upon written request and approval from the Standards Bureau commander.
 19. District Internal Affairs Investigations, along with investigative reports, will be completed and submitted to the Standards Bureau within 30 calendar days of assignment. Extensions may be granted for extenuating circumstances, upon written request and approval from the Standards Bureau commander.
 20. Internal Affairs Investigations, along with investigative reports, will be completed and submitted to the Standards Bureau within 60 calendar days of assignment. Extensions may be granted for extenuating circumstances, upon written request and approval from the Standards Bureau commander.
 21. Internal Affairs Investigations resulting in serious, sustained allegations will be reviewed by the Office of Legal Affairs. The Office of Legal Affairs will review the investigative report and make suggestions/comments.
- F. Findings:** At the conclusion of an Internal Affairs Investigation, the investigator shall submit a report which will contain a synopsis of the allegations against the Subject Employee, a narrative of the investigation, and the findings. Each allegation shall indicate one of the following findings.

INTERNAL INVESTIGATIONS

1. Exonerated - A finding of "Exonerated" indicates the Subject Employee committed all or part of the alleged act, but the act was lawful or justified.
2. Sustained - A finding of "Sustained" indicates the Subject Employee committed all or part of the alleged act and the act was unlawful or violated policy.
3. Not-Sustained - A finding of "Not-Sustained" indicates the investigation did not produce information sufficient to prove or disprove the allegation.
4. Unfounded - A finding of "Unfounded" indicates the Subject Employee did not commit the alleged act.

G. Investigative Reports & Records

1. Once an investigative report, generated from an Internal Affairs Investigation or a District Internal Affairs Investigation, has been completed, it will be sent to the Standards Bureau commander for review and then forwarded to Chief of the State Police for final disposition.
2. Once an Administrative Inquiry report is completed, it will be sent to the Standards Bureau commander for review, tracking, storage or further investigation if required.
3. Every complaint received by this department shall be recorded on a uniform complaint form, investigated as required by policy and forwarded to the Standards Bureau. The Standards Bureau will be responsible for the maintenance and secure storage of complaints and the reports generated from those complaints.
4. Reports and complaints will be stored separate from Subject Employee personnel files.
5. A database for use in tracking complaints and as part of the Early Intervention Personnel System will be maintained by the Standards Bureau. Only supervisors and clerical staff required to maintain the records within the Standards Bureau will have access to the database. Access to the database by other personnel will require the approval of the Secretary, or the Chief of the State Police.
- 6. All Internal Affairs investigations and administrative investigations are confidential and shall only be discussed/viewed with and/or amongst authorized DPS employees or as otherwise required or allowed by law.

Clarification added.

H. Internal Affairs Investigations and Sanctions

1. The Secretary or the Chief of the State Police may eliminate sanctions against a Subject Employee who has been the subject of an Internal Affairs investigation, when the investigative process takes more than six months to complete.
2. The six month time frame is calculated from the date the complaint is filed against the Subject Employee until the date the employee is notified of the investigative findings and discipline.
3. Should the investigative process be delayed due to circumstances beyond the agency's control, the time limitation may be extended upon written approval by the DPS Secretary or the Chief of the State Police.

7.0 ATTACHMENTS

A. Department of Public Safety Uniform Complaint Form

8.0 APPROVAL

APPROVED BY: s/ John Denko
DPS Cabinet Secretary

DATE: November 29, 2010